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10 QUALITY MERCHANT SERVICES, INC. AND  
11 MICHAEL ALIMENTO

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

14 DR. TIMOTHY COLLINS and SIDNEY	)	CASE NO. 4:17-cv-03806-CW
15 NAIMAN, individually and on behalf of all	)	
16 others similarly situated,	)	
	)	<b>QUALITY MERCHANT</b>
17 Plaintiffs,	)	<b>SERVICES, INC.’S ANSWER TO</b>
	)	<b>SECOND AMENDED COMPLAINT</b>
18 v.	)	<b>FOR DAMAGES AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
19 TOTAL MERCHANT SERVICES, INC.,	)	
20 QUALITY MERCHANT SERVICES, INC.,	)	
MICHAEL ALIMENTO and BOBBY	)	
21 POWERS,	)	
	)	
Defendants.	)	

22 Defendant, QUALITY MERCHANT SERVICES, INC. (“QMS”), hereby answers  
23 Plaintiffs’ Second Amended Complaint for Damages and Injunctive Relief as follows:

24 **I. INTRODUCTION**

25 1. Paragraph 1 of Plaintiffs’ Second Amended Complaint for Damages and  
26 Injunctive Relief (“SAC”) is an introductory paragraph that does not contain any allegations. As  
27

such, QUALITY MERCHANT SERVICES, INC. neither admits nor denies the same.

## II. PARTIES

2. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 2 of the SAC and, therefore, neither admits nor denies the same.

3. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 3 of the SAC, and, therefore, neither admits nor denies the same.

4. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 4 of the SAC, and, therefore, neither admits nor denies the same.

5. QUALITY MERCHANT SERVICES, INC. admits the allegations of fact contained in paragraph 5 of the SAC.

6. QUALITY MERCHANT SERVICES, INC. admits that Defendant Michael Alimento is an individual residing in Illinois and that he is the Vice President of Quality Merchant Services, Inc. QUALITY MERCHANT SERVICES, INC. denies the remaining allegations of fact contained in paragraph 6 of the SAC.

7. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 7 of the SAC, and, therefore, neither admits nor denies the same.

## III. JURISDICTION AND VENUE

8. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 8 of the SAC, and, therefore, neither admits nor denies the same.

1           9.       QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
2 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 9  
3 of the SAC, and, therefore, neither admits nor denies the same.

4           10.      QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
5 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 10  
6 of the SAC, and, therefore, neither admits nor denies the same.

7           11.      QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
8 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 11  
9 of the SAC, and, therefore, neither admits nor denies the same.

10                   **IV. THE TELEPHONE PROTECTION ACT OF 1991, 47 U.S.C. § 227**

11           12.      QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
12 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 12  
13 of the SAC, and, therefore, neither admits nor denies the same.

14                   Automated Calls to Cellular Telephones

15           13.      QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
16 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 13  
17 of the SAC, and, therefore, neither admits nor denies the same.

18           14.      QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
19 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 14  
20 of the SAC, and, therefore, neither admits nor denies the same.

21           15.      QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
22 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 15  
23 of the SAC, and, therefore, neither admits nor denies the same.

24           16.      QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
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1 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 16  
2 of the SAC, and, therefore, neither admits nor denies the same.

3 17. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
4 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 17  
5 of the SAC, and, therefore, neither admits nor denies the same.

6 18. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
7 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 18  
8 of the SAC, and, therefore, neither admits nor denies the same.

9  
10 The Transmission of Facsimile Advertisements

11 19. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
12 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 19  
13 of the SAC, and, therefore, neither admits nor denies the same.

14 20. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
15 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 20  
16 of the SAC, and, therefore, neither admits nor denies the same.

17 21. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
18 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 21  
19 of the SAC, and, therefore, neither admits nor denies the same.

20 22. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
21 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 22  
22 of the SAC, and, therefore, neither admits nor denies the same.

23 23. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon  
24 which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 23  
25 of the SAC, and, therefore, neither admits nor denies the same.  
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24. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact contained in paragraph 24 of the SAC. Further QAULITY MERCHANT SERVICES, INC. states that Plaintiff, SIDNEY NAIMAN published his cell phone number for his business and left his cell phone number with Defendant, QUALITY MERCHANT SERVICES, INC., as a contact number requesting calls back to his cell phone.

25. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 25 of the SAC, and, therefore, neither admits nor denies the same.

26. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact contained in paragraph 26 of the SAC.

27. QUALITY MERCHANT SERVICES, INC. admits the allegations of fact contained in paragraph 27 of the SAC.

28. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact contained in paragraph 28 of the SAC.

29. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 29 of the SAC, and, therefore, neither admits nor denies the same.

30. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 30 of the SAC, and, therefore, neither admits nor denies the same.

31. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 31 of the SAC, and, therefore, neither admits nor denies the same.

**V. FACTUAL ALLEGATIONS**

**A. Factual Allegations Regarding Total Merchant Services.**

32-40. QUALITY MERCHANT SERVICES, INC. does not respond to the allegations of fact contained in paragraphs 32 to 40 of the SAC as they are not directed to QUALITY MERCHANT SERVICES, INC. or MICHAEL ALIMENTO.

**B. Factual Allegations Regarding Plaintiff Dr. Collins**

41-54. QUALITY MERCHANT SERVICES, INC. does not respond to the allegations of fact contained in paragraphs 41 to 54 of the SAC as they are not directed to QUALITY MERCHANT SERVICES, INC. or MICHAEL ALIMENTO.

**C. Factual Allegations Regarding Plaintiff Naiman**

55-67. QUALITY MERCHANT SERVICES, INC. does not respond to the allegations of fact contained in paragraphs 55 to 67 of the SAC as they are not directed to QUALITY MERCHANT SERVICES, INC. or MICHAEL ALIMENTO.

**D. Factual Allegations Regarding Additional Consumer Complaints**

68. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 68 of the SAC, and, therefore, neither admits nor denies the same.

69. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 69 of the SAC, and, therefore, neither admits nor denies the same.

70. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 70 of the SAC, and, therefore, neither admits nor denies the same.

71. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 71

of the SAC, and, therefore, neither admits nor denies the same.

72. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 72 of the SAC, and, therefore, neither admits nor denies the same.

**VI. TOTAL MERCHANTS LIABILITY AND ITS ARRANGEMENT WITH QUALITY MERCHANT**

73-84. QUALITY MERCHANT SERVICES, INC. does not respond to the allegations of fact contained in paragraphs 73 to 84 of the SAC as they are not directed to QUALITY MERCHANT SERVICES, INC. or MICHAEL ALIMENTO.

**VII. TOTAL MERCHANT'S LIABILITY FOR THE FACSIMILE ADVERTISING OF BOBBY POWERS**

85-94. QUALITY MERCHANT SERVICES, INC. does not respond to the allegations of fact contained in paragraphs 85 to 94 of the SAC as they are not directed to QUALITY MERCHANT SERVICES, INC. or MICHAEL ALIMENTO.

**VIII. CLASS ACTION ALLEGATIONS**

95. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 95 of the SAC, and, therefore, neither admits nor denies the same.

96. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 96 of the SAC, and, therefore, neither admits nor denies the same.

97. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 97 of the SAC, and, therefore, neither admits nor denies the same.

98. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 98 of the SAC, and, therefore, neither admits nor denies the same.



102. QUALITY MERCHANT SERVICES, INC. has insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations of fact contained in paragraph 102 of the SAC, and, therefore, neither admits nor denies the same.

106. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact as to QUALITY MERCHANT SERVICES, INC. and MICHAEL ALIMENTO contained in paragraph 106 of the SAC.



**X. SECOND CLAIM FOR RELIEF**  
**(Knowing and/or Willful Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (b)(1)(A))**

107. QUALITY MERCHANT SERVICES, INC. realleges and incorporates each and every response set forth in the preceding paragraphs.

108. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact as to QUALITY MERCHANT SERVICES, INC. and MICHAEL ALIMENTO contained in paragraph 108 of the SAC.

109. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact as to QUALITY MERCHANT SERVICES, INC. and MICHAEL ALIMENTO contained in paragraph 109 of the SAC.

**THIRD CLAIM FOR RELIEF**  
**(Violation of the Telephone Consumer Protection Act, 47 U.S.C., § 227 (b)(i)(A))**

110. QUALITY MERCHANT SERVICES, INC. realleges and incorporates each and every response set forth in the preceding paragraphs.

111. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact as to QUALITY MERCHANT SERVICES, INC. and MICHAEL ALIMENTO contained in paragraph 111 of the SAC.

112. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact as to QUALITY MERCHANT SERVICES, INC. and MICHAEL ALIMENTO contained in paragraph 112 of the SAC.

113. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact as to QUALITY MERCHANT SERVICES, INC. and MICHAEL ALIMENTO contained in paragraph 113 of the SAC.

**XII. FOURTH CLAIM FOR RELIEF**  
**(Knowing and/or Willful Violations of the Telephone Consumer Protection Act, 47, U.S.C. § 227(b)(1)(A))**

114. QUALITY MERCHANT SERVICES, INC. realleges and incorporates each and

every response set forth in the preceding paragraphs.

115. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact as to QUALITY MERCHANT SERVICES, INC. and MICHAEL ALIMENTO contained in paragraph 115 of the SAC.

116. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact as to QUALITY MERCHANT SERVICES, INC. and MICHAEL ALIMENTO contained in paragraph 116 of the SAC.

117. QUALITY MERCHANT SERVICES, INC. denies the allegations of fact as to QUALITY MERCHANT SERVICES, INC. and MICHAEL ALIMENTO contained in paragraph 117 of the SAC.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant QUALITY MERCHANT SERVICES, INC. prays that Plaintiffs' Second Amended Complaint for Damages and Injunctive Relief be dismissed and for such other further relief as the Court deems just and proper.

Dated: March 16, 2018

GORDON REES SCULLY MANSUKHANI, LLP

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